RECEIVED

JUL 1 4 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C.**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Interconnection and Resale | ) | CC Docket No. 94-54 |
| Obligations Pertaining to Commercial | ) | |
| Mobile Radio Services | ) | |

DOCKET FILE COPY ORIGINAl

# REPLY COMMENTS OF GTE

GTE Service Corporation on behalf of
its telephone and wireless companies

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5276

July 14, 1995

THEIR ATTORNEY

No. of Copies rec'd 0+5
List ABCDE

## TABLE OF CONTENTS

## SUMMARY

The Commission should adopt its proposal not to impose a mandatory CMRS interconnection requirement. Parties asking for a specific interconnection requirement are wrong in their assertion that cellular carriers have market power and that an interconnection requirement is necessary. Likewise, no additional rules are necessary to govern interconnection with LEC-affiliated CMRS providers. Market forces backed by FCC enforcement will ensure that all CMRS providers offer interconnection when technologically and economically feasible.

GTE opposes Pacific Telesis' request that the Commission mandate that PCS providers have roaming access to cellular networks. Pacific Telesis' request contradicts the Commission's stated intention to allow the marketplace to govern roaming arrangements. Moreover, Pacific Telesis' concerns with respect to roaming ignore market realities.

The Commission should reject Ameritech's statement opposing a resale exception for air-ground providers. In contrast to Ameritech, which did not address the merits of an air-ground exception, all other parties addressing the issue agreed that differences between air-ground and other CMRS justify an exception. GTE also believes that the Commission should clarify that its resale policy does not require carriers to provide access to proprietary technologies and products.

The Commission must recognize that the circumstances and conditions attendant a resale arrangement with a "pure" reseller are much different than

those present in reselling service to a competitor that has not yet constructed facilities. These differences, together with past Commission decisions, support a determination that contract terms negotiated with facilities and non-facilities-based CMRS providers for resale purposes may reasonably differ.

The vast majority of commenters addressing the reseller switch proposal supported the Commission's intention not to mandate CMRS interconnection with reseller switches. These parties show that direct reseller switch interconnection is inappropriate and unnecessary given the competitive nature of the CMRS marketplace; would be extremely costly without providing any significant benefits; would undermine the competitive incentive to take risks and to make the investments necessary to develop new technologies; and would present numerous technical problems.

Finally, GTE notes that parties responding to the Commission's inquiry regarding preemption of state interconnection requirements unanimously support FCC preemption of any such state requirements. In addition, AT&T joined GTE in arguing that Commission preemption should include reseller switch interconnection requirements as well.

RECEIVED

JUL 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Interconnection and Resale | ) | CC Docket No. 94-54 |
| Obligations Pertaining to Commercial | ) | |
| Mobile Radio Services | ) | |

## REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE") on behalf of its telephone and wireless companies, hereby submits its reply to comments filed in response to the Federal Communications Commission's ("FCC" or "Commission") *Second Notice of Proposed Rulemaking ("Second NPRM")* in the above-captioned proceeding.[1] The *Second NPRM* considers whether to adopt interconnection, roaming, and resale obligations for providers of commercial mobile radio services ("CMRS"). The Commission proposed that no specific interconnection or roaming requirements should be adopted at this time, but proposed to adopt a resale policy for all CMRS providers similar to the resale requirement currently imposed upon cellular carriers. The Commission also proposed not to adopt a requirement that cellular (or other CMRS providers) allow resellers to directly connect their own switching equipment to the cellular (or other CMRS) network mobile telephone switching office ("MTSO") -- the so-called "reseller switch proposal."

---

1 Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Notice of Proposed Rulemaking*, CC Docket No. 94-54, FCC 95-149 (released April 20, 1995).

GTE filed comments on June 14, 1995, generally supportive of the Commission's proposed actions. In particular, GTE supported the Commission's proposal not to adopt rules requiring direct interconnection between CMRS providers. GTE also agreed with the Commission's proposal not to adopt regulations requiring roaming arrangements between CMRS providers. GTE supported the Commission's proposal to adopt a resale obligation for CMRS providers similar to that imposed on cellular service providers, but urged the Commission not to require resale in the air-ground services. Finally, GTE argued that the resale obligation between facilities-based CMRS providers should have a sunset date, and supported the Commission's proposal not to adopt the reseller switch proposal.

GTE now reiterates its support for the Commission's proposals set forth in the *Second NPRM,* and opposes, in particular: (1) MCI and APC's comments that cellular providers have market power and may use it to deny interconnection; (2) Sprint and APC's arguments that LEC-affiliated CMRS providers have market power and may deny interconnection for anticompetitive purposes; (3) Pacific Telesis' comment that cellular carriers must be required to offer roaming arrangements to PCS providers; (4) Ameritech's comments opposing a resale exception for air-ground services; and (5) cellular resellers' comments asking for direct reseller switch interconnection. GTE also asks the Commission to clarify that its resale policy does not require carriers to provide access to proprietary technologies and products, and argues that licensee/resellers may not always be similarly situated with non-licensee/resellers.

## I. DISCUSSION

### A. Interconnection Issues

#### 1. The Commission's Proposal Not to Adopt an Interconnection Requirement for CMRS Providers is Widely Supported

In the *Second NPRM*, the Commission tentatively concluded that no interstate interconnection obligation should be imposed on CMRS providers at this time.[2] GTE supported the Commission's proposal, stating that no specific interconnection requirement was needed because: (1) market conditions will ensure that interconnection arrangements are forged among CMRS competitors when economic conditions warrant them; (2) CMRS providers can interconnect indirectly with other CMRS providers through the LEC network; (3) direct interconnection with other CMRS providers may not be economically viable for several years; (4) there is no evidence that the marketplace has failed to ensure that rival firms will be willing to interconnect with one another; and (5) the Commission has the means through the complaint process to take actions to ensure that reasonable requests for interconnection are granted.[3]

The overwhelming majority of commenters addressing this issue supported the Commission's proposal to let the marketplace govern

---

2 *Second NPRM* at 16 (para. 28).

3 GTE Comments at 4-9.

interconnection arrangements.[4] A few parties, however, argued that the Commission should mandate CMRS-to-CMRS interconnection. American Personal Communications ("APC") and MCI take exception with the Commission's analysis of competitive conditions in the CMRS industry. Both contend that cellular providers have market power and that the Commission has erred in finding that Personal Communications Services ("PCS") and Enhanced Specialized Mobile Radio ("ESMR") systems competition will serve as check against anticompetitive behavior by cellular carriers. APC, a new PCS licensee, argues that the two existing cellular providers will start out with a great size advantage over a PCS provider, and will have an incentive and the ability to raise its rivals' costs by denying interconnection.[5] MCI likewise argues that regulatory oversight is needed until competition develops.[6]

GTE believes that APC and MCI are wrong, both in their characterization of the CMRS marketplace and in their assertion that an interconnection requirement is necessary. Both APC and MCI base their arguments on the notion that cellular providers have market power. But, GTE and others have previously shown that the cellular services market operates consistent with what

---

4 By GTE's count, nearly 30 parties supported the Commission's proposal. *See, e.g.,* AirTouch Communications, Inc. ("AirTouch") Comments at 2-9; American Mobile Telecommunications Association, Inc. ("AMTA") Comments at 3-5; Ameritech Comments at 2-5; AT&T Comments at 5-20; Nextel Communications, Inc. ("Nextel") Comments at 2-4; PCS Primeco Comments at 4-7.

5 APC Comments at 1-5.

6 MCI Comments at 2. A third party, the General Services Administration ("GSA") argued that the Commission should adopt a CMRS interconnection requirement, regardless of the CMRS provider's market power, size, or corporate affiliation. GSA Comments at 2-6.

would be expected of a fully competitive market.[7] Moreover, although it stopped short of finding the cellular services segment of the CMRS marketplace fully competitive, the Commission has found that enough competition exists to forbear from enforcing the tariff filing requirement and other provisions of the Communications Act.[8] This determination could not have been made if the Commission believed cellular providers were capable of exercising market power. In addition, the Commission has concluded that the advent of PCS and enhanced SMR offerings will further increase competition in the mobile services marketplace and stated that the effects of this new competition must be considered in analyzing the merits of the reseller switch proposal.[9] Indeed, in the context of denying petitions for state CMRS rate regulatory authority, the Commission found that "the advent of PCS appears unambiguously to be having an impact on the present marketplace. . ."[10]

Nevertheless, in the *Second NPRM*, the Commission stated that if the cost of direct interconnection were less than interconnection through the LEC,

---

7 GTE Comments at 6, *citing* Stanley M. Besen, Charles River Associates; Concentration, Competition, and Performance in the Mobile Telecommunications Services Market (September 9, 1994) (Attached as Appendix A to GTE's Comments, filed September 12, 1994, CC Docket 94-54) ("*Besen Paper*") at 5-9. *See also* AT&T Comments at 6-7.

8 Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1470-1472 and 1478 (para. 174) ("*Regulatory Parity Order*") (1994).

9 Petition of the People of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates, *Report and Order*, PR Docket No. 94-105, FCC No. 95-195 (released May 19, 1995) at 17 (para. 31) ("*California Preemption Order*"). *See also Second NPRM* at 47-48.

10 *California Preemption Order* at 19 (para. 33).

and if one firm originates significantly more traffic than its rivals, a firm could raise a rival's costs by denying direct interconnection.[11] APC's is concerned that, at the outset, cellular carriers will have a market share advantage over PCS providers and could, in theory, raise its rivals' costs by denying direct interconnection.

As an initial matter, APC's argument rests upon unsound economic theory. While it is possible that a carrier could raise a rival's costs if the rival completed more calls on its network than it completed on the rival's network, that scenario is unlikely. In reality, as AirTouch indicates in its comments, if customers of a large CMRS provider are making calls to customers of a smaller CMRS provider, they are likely to be receiving roughly the same number calls from those customers as well.[12] Thus any attempt to raise the costs of the smaller carrier is likely to raise the costs of the larger carrier in roughly the same amount.

Even if some carriers could, in some circumstances, raise a rival's costs by denying direct interconnection, APC's argument assumes that direct interconnection among cellular providers is common today and that cellular-to-cellular traffic volumes are such that direct interconnection is more economical than interconnection through the LEC. In fact, cellular carriers have argued and the Commission has concurred that traffic volumes between cellular providers in

---

11 *Second NPRM* at 17-18 (para. 32).

12 AirTouch Comments at 5.

most cases may not warrant direct interconnection at this time.[13] Indeed, interconnection through the LEC is still the most common form of CMRS-to-CMRS interconnection, and there is no evidence that direct interconnection will be the most efficient form of interconnection in all situations.[14] Thus, in the near-term, it is not likely any cost advantage can be gained by denying an interconnection request by a CMRS provider with smaller traffic volumes.[15] Moreover, by the time CMRS-to-CMRS traffic volumes make direct interconnection economically feasible on a widespread basis, PCS and ESMR networks will have had an opportunity to narrow, if not eliminate, the market share gap.[16]

Finally, in the event that the marketplace fails to ensure that a reasonable interconnection request is granted, the Commission has the power to take strong action against the denying carrier and to require the connection. In the *Second NRPM,* the Commission put all CMRS providers on notice that it expects all reasonable interconnection requests to be granted and that it will use the section 208 complaint process to ensure that interconnection is not denied as a means

---

[13] *Second NPRM.* at 17 (para. 30). *See also*, AirTouch Comments at 5-6; AT&T Comments at 13-14.

[14] For example AirTouch argues that LEC interconnection rates are declining and that interconnection, in some locations is also available from competitive access providers. AirTouch Comments at 7-8. *See also* AT&T Comments at 12.

[15] Also given the low percentage of CMRS-to-CMRS traffic, it is unlikely that any cost differential is likely to have a significant effect on any CMRS provider. *See* AirTouch Comments at 4-5; AT&T Comments at 12, n.24.

[16] GTE believes that even when CMRS-to-CMRS traffic volumes reach the point where direct interconnection becomes economically viable for most carriers, market forces rather than regulation are best suited to govern CMRS interconnection arrangements.

of gaining a competitive advantage over a rival. The threat of Commission enforcement action or future regulation is a very powerful incentive for cellular carriers to act reasonably in dealing with interconnection requests from other CMRS providers.

2. The Marketplace Should Govern Interconnection Arrangements Among CMRS Providers Where the CMRS Provider is a LEC Affiliate

In the *Second NPRM,* the Commission expressed concern that LEC-affiliated CMRS providers may have a unique incentive to deny interconnection to a CMRS rival as a means of keeping CMRS traffic on the local exchange landline network. After consideration, the Commission proposed not to adopt any specific interconnection requirement for LEC-affiliated CMRS providers.[17] GTE, in its comments, supported the Commission's proposed action, but did not share its underlying concern.[18]

APC and Sprint raise issues concerning interconnection arrangments where LECs have affiliated CMRS providers serving overlapping areas.[19] APC argues that LEC-affiliated CMRS providers will exploit their initial market share advantage over start-up PCS providers when negotiating interconnection

---

17 *Second NPRM* at 22-23 (para. 43).

18 GTE Comments at 10-11.

19 In addition, Comcast asks the Commission to adopt a "sender keep all" approach, whereby LECs and CMRS providers would not charge each other for terminating one another's traffic. The "sender keep all" proposal fails to consider disproportionate relations between LEC and CMRS traffic that exist today. GTE has consistently advocated that interconnection arrangements between LECs and CMRS providers be established through private negotiations.

arrangements with other carriers.[20] APC also argues that the LEC will engage in discriminatory pricing to the disadvantage of non-affiliated CMRS providers, but does not offer any evidence to support its concerns.[21]

APC appears to support its argument for discrimination protection on the fact that LEC-affiliated CMRS providers will have an initial market share advantage over start-up PCS providers.[22] Whether an existing CMRS provider holds a market share advantage over start-up CMRS providers has nothing to do with whether the existing provider is a LEC affiliate.[23] Indeed only one of the two cellular carriers in each market may be affiliated with the local exchange service provider, yet both will have more initial market share than the new PCS providers. As such, initial market share advantage cannot be a basis for singling out LEC-affiliated CMRS providers for extra regulatory restrictions.

In any case, no additional requirements are necessary to ensure that a LEC does not discriminate in favor of its affiliated CMRS providers in assessing pricing of interconnection charges.[24] Section 202(a) of the Communications Act

---

20 APC Comments at 3-5.

21 *Id.* at 4-5.

22 APC Comments at 3-4. As such, APC appears to confuse the concerns identified in paragraph 32 of the *Second NPRM* -- which were unrelated to the LEC affiliate issue, and the concern identified in paragraph 43.

23 GTE addressed APC's concerns regarding market share advantage in the previous subsection.

24 Indeed, Pacific Bell and Nevada Bell recently announced that interconnection is available for CMRS providers in both California and Nevada on the same terms and conditions as such services are made available to their affiliate, Pacific Bell Mobile Services. The companies also outlined how they will handle CMRS interconnection orders and repair requests in a non-discriminatory manner. Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket

already prohibits all common carriers from engaging in unjust or unreasonable discrimination. Moreover, in requiring LECs to offer interconnection to cellular providers, the Commission stated that "telephone companies are required to provide (a) a form of interconnection to a nonwireline carrier no less favorable than that used by the wireline cellular carrier and (b) a form of interconnection that is reasonable for the particular cellular system, to be negotiated by the cellular carrier and the wireline telephone company."[25] The FCC has stated that it will enforce its LEC-to-CMRS interconnection policy through the complaint process.[26] Accordingly, no further regulatory action is necessary to ensure that non-affiliated CMRS carriers enjoy the same interconnection arrangements as LEC-affiliated CMRS carriers.

Sprint's argument merely reiterates the concerns expressed by the Commission in the *Second NPRM.* Sprint suggests that the owner of the landline LEC and its CMRS affiliate has an incentive to deny interconnection with the CMRS affiliate in order to ensure that CMRS traffic continues to pass over LEC facilities.[27]

---

No. 90-314, Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services' Plan of Non-Structural Safeguards Against Cross-Subsidy and Discrimination, filed July 10 1995.

25 The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Memorandum Opinion and Order*, FCC 86-85, 59 Rad.Reg.2d 1275, 1283-1284 (Appendix B: FCC Policy Statement on Interconnection of Cellular Systems) (1986); *aff'd, Declaratory Ruling,* Report No. CL-379, 2 FCC Rcd 2910 (1987), *reaff'd, Memorandum Opinion and Order on Reconsideration,* Report No. CL-379, 4 FCC Rcd 2369 (1989). The FCC later applied this policy to LEC interconnection with all CMRS providers. *Regulatory Parity Order*, 9 FCC Rcd 1411, 1497-1501 (1994).

26 *Regulatory Parity Order* at 1498 (para. 233).

27 Sprint Telecommunications Venture ("Sprint") Comments at 5.

Sprint's arguments must be rejected for several reasons. First, denial of direct interconnection where such an arrangement is economically justified would raise the costs of both CMRS providers, thus harming GTE as well as its competitor. As GTE stated earlier, GTE Mobilnet's interconnection decisions are made independent of its LEC affiliates. GTE Mobilnet bases such decisions solely on the economic cost of direct versus indirect interconnection and on the technical feasibility of direct interconnection.[28] Second, competition prevents GTE from profiting from such a strategy. Given the number of entities that will soon compete in the CMRS marketplace, GTE will not be able to afford to raise its costs by refusing to enter into direct interconnection arrangements. Moreover, a LEC's ability to profit by denying interconnection with its CMRS affiliate will be severely curtailed by the growth of competitive access alternatives. Third, Sprint's argument should be rejected because it is based entirely on theory. Absent any significant evidence of anticompetitive behavior on the part of LECs and their CMRS affiliates, the Commission should not adopt any regulatory requirements. Finally, the Commission has pledged to be "particularly vigilant" in policing any efforts to deny interconnection in order to gain a competitive advantage.[29] Accordingly, no specific regulatory standards are necessary.

---

28 GTE Comments at 11.

29 *Second NPRM* at 22-23 (para. 43).

## B. The Commission Should Let the Marketplace Govern Roaming Arrangements

In the *Second NPRM,* the Commission stated that while it believes it should take any steps necessary to support roaming, no regulatory action is required at this time. The Commission stated that market forces should be relied on to address the technical issues associated with roaming service.[30] GTE supported the Commission's proposal, commenting that, as was the case in the cellular industry, the marketplace will ensure all CMRS providers are able to negotiate roaming arrangements with other carriers.[31]

While most parties supported the Commission's proposal to let the marketplace determine roaming arrangements, Pacific Telesis argued that the Commission should mandate that PCS providers have roaming access to cellular out-of-territory networks at any time and to cellular in-territory networks during the 10-year build-out period. Pacific Telesis claims that this requirement is necessary, primarily because by denying roaming service to PCS providers, cellular providers can differentiate their service from PCS and gain a competitive advantage.[32]

The Commission should reject this argument on two grounds. First, Pacific Telesis' request contradicts the Commission's stated intention to allow the marketplace to govern roaming arrangements. As GTE commented earlier, it

---

30 *Id.* at 28 (paras. 54-56).

31 GTE Comments at 12-14.

32 Pacific Telesis Comments at 3-7.

is a long-standing principal of economic theory that regulators should only regulate where markets fail.[33] GTE believes that the marketplace will ensure that roaming arrangements will be entered into when technologically and economically feasible. In the absence of evidence to the contrary, GTE believes that the Commission is correct in proposing to allow the marketplace to govern roaming arrangements.

Second, Pacific Telesis' concerns with respect to roaming ignore market realities. Entities purchasing most PCS licenses also hold cellular licenses in other markets.[34] Thus, cellular licensees will not attempt to deny roaming services to PCS providers so that roaming requests made by their own PCS licensees are granted in kind. Moreover, Pacific Telesis fails to consider that as PCS networks grow and technical issues are resolved, cellular providers will have an economic incentive to provide their customers with the ability to roam onto PCS providers' networks.

C. Exceptions to the Resale Requirement

(1) Contrary to Ameritech's Assertion, an Exception to the Resale Policy Should be Extended to Air-Ground Service Providers

In the *Second NRPM,* in response to GTE's comments in an earlier round of this proceeding, the Commission sought comment as to whether technical considerations raised with regard to air-ground service are sufficient to permit

---

33 GTE Comments at 8. Although GTE's earlier remarks were addressed to the interconnection issue, they are also relevant in the roaming context.

34 For example, GTE, which has cellular licenses nationwide, acquired the rights to four broadband PCS licenses earlier this year.

restrictions on the resale of air-ground service and whether such restrictions would violate section 201(b) and section 202(a) of the Communications Act.[35] GTE responded by arguing that differences between air-ground service and other CMRS justify excluding air-ground service providers from the CMRS resale requirement. In particular, GTE showed how equipment incompatibility and spectrum sharing make resale difficult, if not impossible, in the air-ground context. GTE also argued that a resale requirement was not necessary because healthy competition already exists among air-ground service providers.[36]

Only one commenter, Ameritech, opposed granting an exception to the CMRS resale requirement to air-ground providers. Rather than addressing the merits of arguments in support of an air-ground exception, however, Ameritech labeled GTE's request a "blatantly self-interested plea for special treatment."[37] Insofar as Ameritech failed to discredit, or even consider, any of the particular arguments supporting an air-ground exception, its comments should be given no weight.

The two other facilities-based providers of air-ground service supported GTE's characterization of the technical and economic issues inhibiting air-ground resale. Both AT&T and In-Flight Phone Corporation ("In-Flight") echoed GTE in stating that equipment incompatibility and the shared spectrum

---

35 *Second NPRM* at 44 (para. 87).

36 GTE Comments at 18-22.

37 Ameritech Comments at 6.

requirement present unique problems hindering resale in the air-ground services.[38] Moreover, as In-Flight correctly noted, when the Commission previously required GTE to permit resale of air-ground service, no party attempted to do so, primarily because of these problems.[39] In light of these technical concerns, therefore, the Commission should not impose a resale requirement on air-ground service providers.

2. The Commission Should Clarify that its Resale Policy does not Include Providing Access to Proprietary Technologies and Products

GTE also believes that the Commission should clarify that its resale policy does not require carriers to provide access to proprietary technologies and products. In the CMRS marketplace, the firms that are most successful will be the ones that distinguish themselves from their rivals with superior technology and innovative new products and services based on that technology. As a result, CMRS providers today are investing billions of dollars and years of research to develop technologies that might give them a marketplace advantage. GTE submits that requiring CMRS providers to share their proprietary technology with competitors would harm the public interest by eliminating some of the benefit to be gained by developing technological innovations, thus removing incentives for firms to develop new technologies. To prevent this

38 In-Flight Comments at 5-8; AT&T Comments at 26-27, n.57. Both parties also agreed that healthy competition obviates the need for a resale requirement in the air-ground context.

39 In-Flight Comments at 7-8.

result, the Commission should clarify that its resale policy does not mandate providing access to proprietary technologies and products.

D. The Commission Should Recognize that Facilities-Based Resellers are not Similarly Situated With Other Resellers

In earlier comments filed in this proceeding, GTE requested that the Commission's resale policy for facilities-based CMRS providers recognize the right of the underlying facilities-based carrier to negotiate resale agreements that will compensate the carrier for expenditures on facilities built specifically to meet the resale needs of other facilities-based providers. Underlying facilities-based providers will incur costs to construct facilities in order to meet the resale needs of their facilities-based competitors in the same market. Once these competitors construct their own facilities and remove their traffic, the underlying carrier will be left with both underutilized and obsolete analog investment attributable to resale to those facilities-based carriers. These effects are especially significant considering the ongoing change from analog to digital technology. Accordingly, GTE argued that the Commission's resale policy must give underlying carriers the flexibility to negotiate terms and conditions that account for both underutilized and obsolete analog investment attributable to resale to facilities-based carriers.[40]

The underlying facilities-based carrier will incur other costs in addition to expenditure on facilities built specifically to meet the resale needs of a facilities-based carrier. In light of the potential volume demands these competitors may

---

[40] GTE Comments at 23-24.

impose on the underlying carrier, such additional costs must be factored into resale arrangements with facilities-based resellers.

The marketplace today is dramatically different from when the Commission established the rule requiring that cellular carriers to provide resale service to a facilities-based carrier for a period of five years. With a minimum of up to six new PCS entrants in each market and the promise of robust competition, GTE is concerned that the additional resale demand placed on the underlying facilities-based carrier could be extremely burdensome. GTE also notes that the potential for underutilized plant is great in this multiple competitor environment.

Accordingly, the Commission must recognize that the circumstances and conditions attendant a resale arrangement with a "pure" reseller are much different from a cost and risk standpoint than those present in reselling service to a competitor that has not yet constructed facilities. Facilities-based resellers almost certainly will migrate their customers in mass off GTE's system, while "pure" resellers are more likely to have an ongoing relationship with less dramatic churn. These are strong reasons for the Commission to recognize that facilities and non-facilities-based resellers are not similarly situated.

The Commission has previously recognized that differences in the circumstances and conditions attendant an agreement with different customers can lawfully justify different contract terms and conditions, and do not necessarily contravene the nondiscrimination provisions of the Act. Thus, in the *Interexchange Proceeding*, the Commission found that carriers may lawfully offer individualized contract-based rates to customers, and that differences in the rates, terms and conditions offered to different customers can be justified by cost differences and other factors.[41] The Commission has also previously opined that differences in the projected length and extent of service justify different terms and conditions of a service offering, and thus do not contravene the nondiscrimination provisions of the Act.[42]

The differences discussed above, together with past Commission decisions, support a determination that contract terms negotiated with facilities and non-facilities-based CMRS providers for resale purposes may reasonably differ. Accordingly, the Commission must recognize that any such differences do not contravene section 202(a) of the Communications Act.

E. The Commission Should Reject the Reseller Switch Proposal

The Commission tentatively concluded in the *Second NPRM* that it should not adopt a requirement that cellular (or other CMRS providers) allow resellers to directly connect their own switching equipment to the cellular (or other CMRS) network mobile telephone switching office ("MTSO") -- the so-called "reseller

---

41 Competition in the Interstate Interchange Marketplace, *Report and Order,* CC Docket No. 90-132, 6 FCC Rcd 5880, 5902-5903 and n.216 (1991). The Commission later affirmed this view in the *Tariff 12* proceeding. AT&T Communications Revisions to Tariff F.C.C. No. 12, *Memorandum Opinion and Order on Remand,* CC Docket No. 87-568, 6 FCC Rcd 7039, 7047-7049 (1991). The Commission's analysis of the lawfulness of contract-based rates was later affirmed by the United States Court of Appeals for the District of Columbia Circuit. *Competitive Telecommunications Association v. FCC,* 998 F.2d 1058, 1063-1064 (D.C. Cir. 1993).

42 *See, e.g., ACC Long Distance Corp. v. Yankee Microwave, Inc.*, *Memorandum Opinion and Order,* 71 Rad.Reg.2d 1330 (Common Carrier Bureau 1993) (upholding a contract of six-year duration that reduced rates by 40 percent); Private Line Rate Structure and Volume Discount Practices, *Report and Order*, 97 FCC 2d 923 (1984) (finding volume discounts permissable).

switch proposal."[43] In its comments, GTE opposed the reseller switch proposal because interconnection of this type would impose additional costs on CMRS providers, and because it would not enable resellers to provide any additional services.[44] In addition, GTE argued that the Commission should preempt state-imposed reseller switch interconnection because state interconnection requirements would thwart the FCC's proposed policy regarding reseller switches and because direct interconnection of reseller switches is inextricably intertwined with rates issues.[45]

A number of parties addressed this issue in their comments. The vast majority of commenters supported the Commission's proposal not to mandate CMRS interconnection with reseller switches.[46] The arguments made by these parties provide further reasons not to mandate reseller switch interconnection. For example, several commenters argue that reseller switch interconnection is unnecessary and inappropriate. They note that network unbundling and direct switch interconnection have previously only been mandated under

---

43 *Second NPRM* at 48 (para. 96).

44 GTE Comments at 24-25.

45 *Id.* at 25-26.

46 *See* AirTouch Comments at 19-23; APC Comments at 11-12; AT&T Comments at 28-31, and Appendix B; Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") Comments at 12; BellSouth Comments at 10-11; Cellular Telecommunications Industry Association ("CTIA") Comments at 27-40; Comcast Comments at 27-31; Frontier Cellular Holding, Inc. ("Frontier") Comments at 8; Horizon Cellular Telephone Company ("Horizon") Comments at 4-5; National Telephone Cooperative Association ("NTCA") Comments at 5; New Par Comments at 24-27; Nextel Comments at 16; NYNEX Comments at 8-9; Pacific Telesis Comments at 10-11; Rural Cellular Association ("Rural Cellular") Comments at 8-10; Southwestern Bell Mobile Systems, Inc. ("Southwestern Bell") Comments at 22; Sprint Comments at 10-12; Vanguard Cellular Systems, Inc. ("Vanguard") Comments at 13-15.

circumstances where a monopoly service provider controlled access to essential facilities. They argue that unbundling in order to facilitate reseller switch interconnection is entirely inappropriate and unnecessary given the competitive nature of the CMRS marketplace.[47]

Parties also reinforce the Commission's tentative conclusion that requiring CMRS providers to unbundle their networks -- a necessary component of any reseller switch interconnection proposal -- would be extremely costly and would provide few, if any benefits.[48] Indeed, Vanguard cellular argues that resellers currently can obtain interconnection with other CMRS providers -- albeit not direct switch interconnection -- and through local exchange carrier ("LEC") facilities. Therefore, they argue that "reseller connection at a carrier's switch would not provide any benefits beyond those that are currently available."[49]

A number of parties contend that reseller switch interconnection would allow resellers to obtain the benefits of the huge investments made by existing carriers (and to be made by PCS providers) without assuming any of the risk associated with that investment.[50] Comcast, in particular, argues that "CMRS

---

47 CTIA Comments at 31-32; Pacific Telesis Comments at 10-11; Sprint Comments at 10-12.

48 *See, e.g.,* AirTouch Comments at 21; CTIA Comments at 32-34.

49 Vanguard Comments at 13-14. *See also* AT&T Comments at 30-31.

50 Moreover, AirTouch argues that, in the situation where a licensee, prior to building its own network, resells the services of its competitors, allowing cellular switch interconnection would allow such entities a means of obtaining competitively sensitive information about competitors' network architecture, operations and costs. AirTouch Comments at 22-23.

licensees would have to dismantle their networks and surrender the large investment and equity in their services to entities [that] have invested nothing and have neither been subject to the same public interest obligations and conditions imposed on CMRS licensees nor built out their own networks."[51] A reseller switch interconnection requirement, they contend, would undermine the competitive incentive to take risks and to make the investments necessary to develop new technologies.[52] Indeed, APC comments that its proposed PCS network could not withstand the intrusive disruption to its network the reseller switch proposal would require. It contends that adoption of a reseller switch interconnection requirement would cause it to delay turning on its system.[53]

Parties also question the technical viability of reseller switch interconnection. AT&T and McCaw, in particular, argue that reseller switch proposals are wholly untested and raise significant technical issues or problems. They describe a number of technical problems, including: (1) the lack of a signaling protocol that can properly route traffic to the reseller's switch; (2) 911 calls by reseller switch would require special applications and MTSO back-up; (3) vertical features under the IS-41 standard can only be handled by the MTSO; (4) cellular switches cannot provide the reseller switch with originating cell site identification for billing purposes; (5) reseller switch malfunction could result in

---

[51] Comcast Comments at 29-30.

[52] *See, e.g.,* AirTouch Comments at 19-20; Bell Atlantic Comments at 12.

[53] APC Comments at 11.